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In the Supreme Court of the United States

OCTOBER TERM, 1955

UNITED STATES OF AMERICA, PETITIONER

v.

ETTORE ZUCCA, ALSO KNOWN AS MARIO SARNI, ALSO KNOWN AS ETTORE SARNI ZUCCA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES

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When the statute is analyzed in the light of the normal meaning of the words and the sentence structure actually used by Congress and in the full context of the entire legislative history of the section and its two identically worded predecessors, the decision below is seen to be erroneous.

A. THE WORDS AND SENTENCE STRUCTURE USED BY CONGRESS DO NOT MANIFEST A PURPOSE TO MAKE THE AFFIDAVIT A JURISDICTIONAL OR PROCEDURAL PREREQUISITE TO MAINTAINING THE ACTION

Section 340 (a) of the Immigration and Nationality Act of 1952 (*supra*, pp. 2–3) is a reenactment of Section 338 (a) of the Nationality Act of 1940, 54 Stat. 1137, 1158. The 1940 enactment, in turn, was a reenactment of Section 15 of the Act of June 29, 1906, 34 Stat. 596, 601, which was the first statute relating to denaturalization. In each statute the following identical language appeared:

> It shall be the duty of the United States district attorneys for the respective districts, upon affidavit showing good cause therefor, to institute proceedings * * *.[1]

In each enactment, in the second portion of the sentence, *after* the part above quoted establishing a duty to proceed, provision was made for venue of denaturalization proceedings in the district of the defendant's residence. In a separate sentence or, in the reenactments, in a separate

[1] By a 1954 amendment, the word "district" was deleted from Section 340 (a) before "attorneys", so as to make this section conform with the revised designation used in the Judicial Code. 68 Stat. 1232.

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OPINIONS BELOW

The *per curiam* affirmance by the Court of Appeals (R. 24) is reported at 221 F. 2d 805. The opinion of the District Court (R. 11–19) is reported at 125 F. Supp. 551.

JURISDICTION

The judgment of the Court of Appeals was entered on April 28, 1955 (R. 25). The petition for a writ of certiorari was filed on July 7, 1955, and was granted on October 10, 1955 (R. 25). The jurisdiction of this Court rests on 28 U. S. C. 1254 (1).

QUESTION PRESENTED

Whether Section 340 (a) of the Immigration and Nationality Act of 1952 makes the furnishing or filing of an affidavit showing good cause a jurisdictional or procedural prerequisite to maintaining a denaturalization action brought in good faith by a United States attorney.

STATUTE INVOLVED

Section 340 of the Immigration and Nationality Act of 1952, 66 Stat. 163, 260, as amended, 68 Stat. 1232, 8 U. S. C., Supp. II, 1451, in pertinent part provides:

REVOCATION OF NATURALIZATION

SEC. 340. (a) It shall be the duty of the United States attorneys for the respective districts, upon affidavit showing good cause therefor, to institute proceedings in any court specified in subsection (a) of section 310 of this title in the judicial district in which the naturalized citizen may reside at the time of bringing suit, for the purpose of revoking and setting aside the order admitting such person to citizenship and canceling the certificate of naturalization on the ground that such order and certificate of naturalization were procured by concealment of a material fact or by willful misrepresentation, * * *. If the naturalized citizen does not reside in any judicial district in the United States at the time of bringing such suit, the proceedings may

be instituted in the United States District Court for the District of Columbia or in the United States district court in the judicial district in which such person last had his residence.

(b) The party to whom was granted the naturalization alleged to have been procured by concealment of a material fact or by willful misrepresentation shall, in any such proceedings under subsection (a) of this section, have sixty days' personal notice, unless waived by such party, in which to make answer to the petition of the United States; and if such naturalized person be absent from the United States or from the judicial district in which such person last had his residence, such notice shall be given either by personal service upon him or by publication in the manner provided for the service of summons by publication or upon absentees by the laws of the State or the place where such suit is brought.

* * * * *

STATEMENT

Respondent Ettore Zucca was naturalized on January 4, 1944 (R. 2). In 1954, the United States Attorney for the Southern District of New York, proceeding under Section 340 (a) of the Immigration and Nationality Act of 1952 (*supra*, pp. 2–3), filed a complaint in the United States District Court in that district, seeking revocation of respondent's naturalization on the grounds of

illegality, concealment of material facts, and willful misrepresentation (R. 2–6). The complaint specifically set forth the written documents and examinations in which respondent had been required to state his membership in organizations and in which he had failed to disclose his membership in the Communist Party and in affiliated organizations (R. 2–3). The complaint, which was verified (R. 6–7, 8), did not refer to or append an affidavit of good cause, but embodied, in addition to the specific allegations, a statement that "good cause exists for the institution of this suit" (R. 6).

Respondent moved to have the complaint dismissed, asserting, among other grounds, that petitioner was required by the Act to file or serve an affidavit showing good cause for the institution of the proceedings (R. 9).

The District Court (Palmieri, J.) held that, before a United States attorney may institute a denaturalization proceeding, he must be furnished with an affidavit of good cause and, further, that he must file it with the court when instituting the proceeding (R. 18). The court ordered the complaint dismissed unless the Government filed an affidavit showing good cause within sixty days (R. 20). On February 14, 1955, by a final order the complaint was dismissed without prejudice to the Government's right to institute an action to denaturalize the defendant upon filing the affidavit (R. 22). On appeal to the Court of Appeals for the Second

Circuit; the order of the District Court was affirmed, *per curiam* (R. 24).

SUMMARY OF ARGUMENT

Section 340 (a) of the Immigration and Nationality Act of 1952 (*supra*, pp. 2–3), does not make the furnishing or filing of an "affidavit showing good cause" a jurisdictional or procedural prerequisite to maintaining denaturalization proceedings brought in good faith by a United States attorney.

A. Section 340, in so far as here pertinent, discloses in its language and structure a clear twofold effect. First, it imposes a duty upon the United States attorney to start proceedings, at the instance of others, for revocation of naturalization, in which case an "affidavit showing good cause" must be furnished to him. In this connection, the section uses the following language:

> It shall be the duty of the United States attorneys for the respective districts, upon affidavit showing good cause therefor, to institute proceedings * * *.

Secondly, the section specifically and separately sets forth the procedural requirements relating to denaturalization proceedings, *i. e.*, which courts shall have jurisdiction, and the types of notice to which a defendant is entitled. The provision for an affidavit showing good cause is not placed among the procedural requirements. It appears only with the words imposing a duty to start an action

at the instance of others than the United States attorney, and is no part of the description of the action to be brought. The statute imposes a "duty", and it is only the duty that is subject to the condition of an "affidavit showing good cause".

Thus, giving effect to the normal meaning of the words and the sentence structure actually used by Congress, it appears from the face of the statute that the affidavit is not a prerequisite to maintaining a denaturalization proceeding at the instance of the United States attorney.

B. The legislative history of Section 340 does not manifest a purpose to make the affidavit a prerequisite, but rather confirms the view of the limited purpose of the statutory reference to an affidavit.

1. The exact language here involved was first enacted in 1906, in an atmosphere substantially charged with distrust of the then enforcement of naturalization requisites. There had been an extensive history of quick and unlawful naturalization of huge blocks of immigrant voters on the eves of elections, raising natural doubts, which were expressed on the floor of Congress, as to whether government attorneys might be guilty of exercising their powers with respect to naturalization in accordance with the expected vote of the persons involved. Bills had been introduced at the 1906 session of Congress, and before, providing for institution of denaturalization complaints by any "citizen". The language imposing a "duty"

upon the United States attorneys to act is accordingly explainable as a concession to this proposal to enforce action when the United States attorney failed to act. The provision that the duty should be "upon affidavit" represents a safeguard against abuse, by irresponsible outsiders, of this power to require government action. Preceding drafts, granting no such powers to outsiders, had included only notice and venue provisions, apparently deemed sufficient as protection for the naturalized citizens. The "good cause" affidavit thus appeared as a preliminary condition to forcing the institution of a revocation proceeding, and not as a part of the proceeding itself.

The departure by the court below from the current decisions and practice, which have made such affidavits unnecessary in a proceeding instituted by the United States attorney, is sought to be justified largely upon the supposition that the decision in *Bindczyck* v. *Finucane,* 342 U. S. 76, requires such a change, and that a letter of the Attorney General in 1907 also confirms the District Court's new view of the legislative purpose. However, this Court, in *Bindczyck,* held only that proceedings under the instant section were exclusive of other proceedings for revocation—specifically, a state court revocation within term time. There was no question or discussion of what was or was not a procedural necessity of the action. Even more clearly, there was, of course, no holding that everything mentioned in the en-

actment was a jurisdictional requisite of the proceeding itself. It was conceded in *Bindczyck* that the notice and venue provisions of the statute had not been observed; conversely, no issue was raised as to filing an affidavit in court.

With respect to the ambiguous 1907 Attorney General's letter, relied upon by the district judge below, the long-standing practice of subsequent Attorneys General demonstrates a more authoritative recognition of the sound view of the statute and its history, *i. e.*, that the affidavit is a condition to imposing a duty upon the United States attorney to institute proceedings when he does not do so at his own instance, and is not a part of the proceeding itself. This was also the preponderance of judicial opinion subsequent to the enactment of the 1906 statute.

2. By the time of the reenactment of the 1906 statute, first in 1940 and again in 1952, the courts had quite generally held that the affidavit was not a jurisdictional requirement. The last of the few expressions of opinion to the contrary had been in 1927. It is reasonable to assume that the legislators, in reenacting the statute, had no intent to make the affidavit a jurisdictional or procedural requirement in the action itself, contrary to the meaning which is most logically drawn from the wording and structure of the section. Thus historically, and on the face of the statute, the affidavit was never designed to require a duplicitous, unnecessary reaffirmation of the responsible

charges represented by the filing of a complaint by a United States attorney. The affidavit was a means of protection when the machinery of a United States attorney's office was to be set in motion by an outsider, a method tending to assure that the duty to act would not be irresponsibly invoked. The affidavit is not a prerequisite to the action of the United States attorney in instituting suit through a formal complaint, brought in good faith following administrative investigation.

ARGUMENT

DENATURALIZATION PROCEEDINGS INSTITUTED IN GOOD FAITH BY A UNITED STATES ATTORNEY ARE NOT SUBJECT TO DISMISSAL BECAUSE OF THE ABSENCE OF AN AFFIDAVIT

In interpreting the provisions of Section 340 (a) of the Immigration and Nationality Act of 1952 (*supra*, pp. 2–3), the district judge decided that Congress had intended denaturalization proceedings to be subject to dismissal whenever the United States attorney brings suit without having *and producing* a supporting "affidavit showing good cause" (R. 16–19).

This holding does not rest upon any affirmative mandate appearing either in Section 340 (a) or in any other portion of the Act. Rather, it is based upon a negative implication not needed to achieve any of the manifested purposes or objectives of Section 340 (a). Furthermore, it is in direct conflict with prior decisions in two circuits and in a number of districts (*infra*, pp. 17–18, 33–34, 37–38).

paragraph, provision was made for sixty days' notice to the defendant.[2]

It is patent from this statutory structure that the reference to an affidavit relates solely to the language making it mandatory for the United States attorney, "upon" such affidavit, to institute the revocation proceeding. The phrase concerning the affidavit is interlocked with the words imposing the duty to institute the proceedings, and is textually unconnected with anything else in the statute. The affidavit from which stems the "duty * * * to institute proceedings" thus has no relation to the procedural or jurisdictional requirements of the action actually instituted, which are spelled out in a different portion of the statute.

The normal implication to be drawn from this statutory structure becomes the more controlling in view of the nature of the proceedings involved.[3] When a proceeding under this section is instituted by the United States attorney, there is of necessity a complaint providing the naturalized person all the elements of responsibility afforded by an affidavit. It is not reasonable to read the statute as requiring a duplication of what the complaint it-

[2] Under the 1906 and 1940 Acts, the grounds of the action were fraud and illegal procurement. The 1952 Act specified the grounds as procurement "by concealment of a material fact or by willful misrepresentation".

[3] Legislation is, of course, to be construed in the setting of existing law and practice. See *United States* v. *Sanges*, 144 U. S. 310, 311. Cf. *Stark* v. *Wickard*, 321 U. S. 288, 309; *Byrnet* v. *Harmel*, 287 U. S. 102, 108.

self necessarily sets forth.[4] If the statute is interpreted, in accordance with its language and structure, as requiring action by the United States attorney at the instance of other parties, then the requirement of an affidavit before such duty arises has a sound basis as precluding irresponsible persons from forcing the United States attorney to act without good cause.

The matter has been expressed as follows in *United States* v. *Leles*, 227 Fed. 189, 190 (N. D. Cal.):

> If the disclosures of the affidavit are such as to show "good cause"—that is, facts which, if sustained by proof, would afford ground for revoking the grant of citizenship involved, either for fraud or illegality—it is made [the United States Attorney's] duty to proceed and institute proceedings to have the validity of the grant judicially investigated and determined. When it has accomplished this purpose of

[4] The Federal Rules of Civil Procedure require every pleading of a party represented by an attorney to be signed by at least one attorney of record. In the absence of specific statutory provision no formal verification or affidavit is required, but "[t]he signature of an attorney constitutes a certificate by him that he has read the pleading; that to the best of his knowledge, information, and belief there is good ground to support it" (Rule 11). In the instant case, moreover, it was certified in the complaint "[t]hat good cause exists for the institution of this suit and the plaintiff is entitled to have the order of the court admitting the defendant to citizenship * * * revoked" (R. 6). And see the affidavits verifying the complaint and supplementing the verification (R. 6–7, 8).

> putting the wheels of justice in motion, the affidavit would seem to have fulfilled its office, and so far as anything appearing in the act to the contrary, becomes functionless. It is obviously not intended to serve as a pleading, since, in requiring a "suit" to be brought, the statute contemplates the filing of a formal complaint.

There is nothing in the wording of the statute to support the interpretation of the district judge below that words, which on their face impose this affirmative duty on the United States attorneys, at the same time by implication impose a limitation on the power of such officers to act in the absence of an affidavit (R. 13–16). The imposition of a duty is not normally consistent with the idea of limitation. It was always the duty of United States attorneys, in the words of present 28 U. S. C. 507 (a) (2), to prosecute "for the government, all civil actions, suits or proceedings in which the United States is concerned". If Congress, by the statute here involved and its identically worded predecessors, had decided to cut down on that duty, it would have almost certainly used appropriate words to make plain its purpose, and not have left the matter to what is at best an ambiguous negative implication. The normal sense of the instant statute is that Congress was imposing on the United States attorneys a specific additional duty, something beyond their existing general duties. This additional duty is to act,

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not alone on their own knowledge and judgment, but on the basis of an affidavit of good cause furnished by private citizens.

Concluding that the statute was designed to cut down the power of United States attorneys to act (R. 15–16), the district judge held that the filing of the affidavit was a procedural requirement essential to maintaining the denaturalization action. Since the premise cannot be sustained, his conclusion falls with it. It begs the point at issue to say that the procedural requirements of the statute must, under the decision in *Bindczyck* v. *Finucane,* 342 U. S. 76, be fully met. In *Bindczyck* there was no consideration of what were all the procedural requirements of the section, since it was there conceded that none of the statutory requirements had been met. However, here the issue is whether the affidavit is, by the statute, made a jurisdictional or procedural condition precedent to the maintenance of the action. Cf. *Sullivan* v. *United States,* 348 U. S. 170, 171–174. As already pointed out, the structure of the statute relates the affidavit to the duty to act, and not to the procedural requirements of the action itself. Since in that structure the provision has a clear and definite meaning, there is no reason to interpret it as requiring something else which it does not in any way purport to require.

The construction insisted upon in the decision below is one which could so easily and clearly have been made explicit in the statute, that the

face of the enactment is eloquent in its very omission. If it had been the purpose of Congress to require an affidavit in the proceeding itself, rather than as a mandate to the United States attorney, it would have been simple draftsmanship explicitly so to provide. It would have been necessary merely to state the requirement: "the affidavit shall be filed with the complaint". Or, if the purpose were truly, as assumed below (R. 18), to furnish some sort of additional document to the defendant, it would have been necessary only to add to the notice requirement a provision for filing and serving of a copy of the affidavit.

In a very early Senate proposal (discussed *infra,* pp. 22–24, in connection with the legislative history) in which it was sought not only to require the United States attorney to act but also to require the judge to act, it was provided that the United States attorney should be under a "duty" to act when "informed in and by the affidavit of a credible person" of the unlawfulness of the naturalization, and then, specifically, that the judge should be under a "duty" to enter a show-cause order "on filing" of the affidavit aforesaid. There was thus proposed language making the distinction between the mere furnishing of an affidavit to the United States attorney to require action by him, and the actual filing of an affidavit as a requisite part of the court proceeding itself. The instant enactment has clearly taken over the first part of this early provision by requiring the

United States attorney to act when supplied with a proper affidavit. Just as clearly, the enactment has omitted any effort to issue a mandate to a judge to act, and with this omission has likewise dropped the filing requirement. We submit this early proposal for its contrast, and to point up how the statute itself establishes a gap fatal to respondent's contentions by the patent and total omission of each and all of the many simple and available wordings which would have been normally used if the congressional purpose had been to make the affidavit a part of the judicial proceeding. The omission is conclusive of both purpose and effect—the affidavit is only a condition when it is sought to require the United States attorney to act upon outside mandate.

Moreover, the affidavit has no real function as a procedural step in the action which the statute requires the United States attorney to institute. As noted above, the affidavit is obviously not intended to be a duplication of the matters set out in the complaint; the "good cause" for bringing the action must necessarily appear from the complaint itself. The District Court in this case seems to have been of the view that the defendant in the action should have the right to test the sufficiency of the affidavit, stating that "the protection afforded by the requirement of an affidavit of good cause would be seriously impaired if the defendant in a denaturalization action could not examine it and test its sufficiency by motion be-

fore trial" (R. 18). But it is very unlikely that Congress ever intended that there should be in effect two trials of the issues of fact—one in the guise of a determination as to whether there is good cause for instituting the action, and another the actual trial itself. Furthermore, the statutory language here involved first appeared in 1906 (see *infra*, pp. 24–30) when pre-trial proceedings generally were more limited than under present practice, thus fortifying this conclusion. If the affidavit is not to be the subject of some such pre-trial procedure, then there is no purpose in requiring it to be filed with the complaint. The failure of Congress to include the affidavit requirement in the portion of the statute setting forth the procedural requirements for denaturalization actions (see *supra*, pp. 10–11) is, therefore, quite understandable. Congress did not make it a procedural requirement because it had no procedural function, once the United States attorney takes formal action either on the basis of the affidavit furnished him or on the basis of his own knowledge or information.

It is significant that the language of the statute has itself apparently sufficed as a basis for the decisions and utterances which, in marked preponderance, have been of the view that the affidavit constitutes no jurisdictional or procedural requirement. Legislative history has not been adduced as a necessary support in these cases.[5]

[5] *Schwinn* v. *United States*, 112 F. 2d 74 (C. A. 9), affirmed, 311 U. S. 616 (the position of the Court of Appeals that the

Nor has the legislative history been invoked in any of the few, very early, decisions or statements cited to contrary effect in the opinion below.[6]

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affidavit was not a jurisdictional requisite (112 F. 2d at 74–75) was not challenged in this Court—both fraud and illegal procurement had been charged and this Court affirmed on the sole ground of illegal procurement); *United States* v. *Tuteur*, 215 F. 2d 415 (C. A. 7); *United States* v. *Knight*, 291 Fed. 129 (D. Mont.), affirmed, 299 Fed. 571 (C. A. 9); *United States* v. *Collins*, 131 F. Supp. 545 (S. D. N. Y.); *United States* v. *Shinkevich*, 131 F. Supp. 547 (E. D. Pa.); *United States* v. *Jerome*, 115 F. Supp. 818 (S. D. N. Y.); *United States* v. *Lustig*, 110 F. Supp. 806 (S. D. N. Y.); *United States* v. *Schuchhardt*, 48 F. Supp. 876 (N. D. Ind.); *United States* v. *Leles*, 227 Fed. 189 (N. D. Cal.), proceeding sustained on the merits, 236 Fed. 784 (N. D. Cal.); *United States* v. *Radzie*, 14 F. R. D. 151 (S. D. N. Y.); *United States* v. *Favorito*, 7 F. R. D. 152 (N. D. Ohio). Also to the same effect, but unreported: *United States* v. *Ronch*, S. D. N. Y., Civ. Div. 77–290 (1953); *United States* v. *Leo Fischer*, N. D. Ill., No. 54 C 614, March 2, 1955; *United States* v. *Celia Miller*, N. D. Cal., March 24, 1955; *United States* v. *Hyman Kaplan*, D. Conn., Civ. Action 3,509, March 28, 1955; *United States* v. *Mankin*, W. D. Pa., C. A. #10,934; *United States* v. *Stefena Brown* (E. D. Mich.), Civ. No. 12,628, Feb. 15, 1955. Also cf. *United States* v. *Chandler*, 132 F. Supp. 650, 652–654 (D. Md.).

[6] *Cohen* v. *United States*, 38 App. D. C. 123 (C. A. D. C.), decided in 1912; *United States* v. *Salomon*, 231 Fed. 928 (C. A. 5), decided in 1916; *United States* v. *Richmond*, 17 F. 2d 28 (C. A. 3), decided in 1927; Letter of Attorney General Bonaparte, March 26, 1907 (unpublished, National Archives) (App. *infra*, pp. 50–51); and Van Dyne, *A Treatise on the Law of Naturalization* (1907) 138. In addition, the district judge below cites *United States* v. *Candela*, 131 F. Supp. 249 (S. D. N. Y.), (which in turn cites and adopts, in its supplemental opinion on rehearing, the reasoning of the instant case).

In sum, the statutory language on its face, the structure of the section, and its manifest purpose, all support the view that the provision relating to the use of an affidavit imposes a duty on United States attorneys to institute proceedings upon the basis of the affidavit and that it was not designed to establish and does not relate to the jurisdictional or procedural aspects of the action itself.

B. THE LEGISLATIVE HISTORY OF THE STATUTE CONFIRMS THE VIEW THAT THE AFFIDAVIT IS NOT A PREREQUISITE

In dismissing the action brought against respondent, the district judge decided that Section 340 (a)'s reference to a "duty * * *, upon affidavit showing good cause therefor, to institute proceedings" impliedly made the affidavit a required part of every denaturalization proceeding. In so holding, reliance was placed largely upon several facets of the legislative history of the predecessor 1906 statute, which were thought to indicate such an intent.[7]

It is the Government's position, as developed *infra*, pp. 20–41, that the legislative history does not properly support this conclusion of the courts below. Congress did not, either in its initial 1906 denaturalization statute or in the subsequent reenactments, make the affidavit a prerequisite to

[7] As pointed out above at p. 10, the 1906 statute, in so far as directly pertinent, contained identical wording as its two subsequent reenactments, Section 338 (a) of the 1940 Act and Section 340 (a) of the 1952 Act.

bringing and maintaining a denaturalization proceeding. Rather, the history tends to support the conclusion most logically drawn from the language and structure of Section 340 (a) and its predecessor provisions—that the affidavit relates only to the duty of the United States attorneys to act, and is not a jurisdictional or procedural prerequisite.

1. *The 1906 enactment arose out of extensive naturalization frauds, and represented a compromise with bills seeking to allow private citizens themselves to institute denaturalization proceedings*

The Act of June 29, 1906, 34 Stat. 596, 601, was "the culmination of half a century's agitation directed at naturalization frauds, particularly in their bearing upon the suffrage". *Bindczyck* v. *Finucane*, 342 U. S. 76, 79; H. Doc. No. 46, 59th Cong., 1st Sess., pp. 11–12, 21–22; H. Rep. No. 1789, 59th Cong., 1st Sess., p. 2. It had become notorious that huge blocks of immigrants, easily susceptible to bribery and influence, had been naturalized on the eves of elections, with outright contempt for the substantive as well as procedural requirements of naturalization. Moreover, although the power of United States attorneys and of judges to vacate unlawful naturalization orders was recognized and extensively employed, "elections could be influenced by irregular denaturalizations as well as by fraudulent naturalizations". *Bindczyck* v. *Finucane*, 342 U. S. at 82.

Some concern was also apparent that United States attorneys might on occasion be indisposed to exert any great vigor toward denaturalization of voters of their own political party. A district attorney who chose to close his eyes to mass accessions of immigrant votes to his own party could in large part defeat one of the principal purposes of denaturalization legislation by failing to attack the invalid certificates. Thus, it was complained in the report of the Commission on Naturalization appointed by Executive Order on March 1, 1905 (H. Doc. No. 46, 59th Cong., 1st Sess., 27), that the requirement for supervision by federal and state prosecuting attorneys would work irregularly:

> Most [sic] United States attorneys would, it is conceivable [sic], perform this duty, but in State courts it would be at the mercy of attorneys some of whom would be indifferent or negligent. * * * It would be unreasonable to expect prosecuting attorneys to do better, for the [earlier] bill *provided for no supervision over them.* [Emphasis added.]

While the suspicion as to United States attorneys did not reach the surface of extensive open discussion, it could scarcely have been without its influence, and it emerged at least twice, in a converse aspect, with respect to a section relating to the power to appeal an original grant of citizenship. In the remarks of Representative Mann

with respect to possible manipulation of provisions for appeal, the following appeared (40 Cong. Rec. 7767–7768, June 2, 1906):

> [A]n astute district attorney who wanted to carry the election in favor of his side could very easily take an appeal in all cases of men who were going to vote the opposition ticket. And my observation and experience are that these advantages are seldom let go by, and I have not the slightest doubt that that sort of thing would be resorted to * * *.[8]

Comparably, the "advantages" of simply ignoring invalid naturalization seemed to call for some procedure to compel, at the instance of others, the government attorney to do his duty. It is this desire to provide a means to compel the maintenance of denaturalization proceedings that appears to be the explanation for and the purpose of the phrase that, "upon affidavit showing good cause", it should be the "duty" of the United States attorney to institute proceedings.

The agitation with respect to naturalization frauds arose and occasionally subsided in the years before 1906, but its impact was at all times clearly extensive. A noteworthy surge almost to the point of legislation occurred in 1870, of interest here because of the combined similarity and contrast of the proposed legislation with the instant provision.

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[8] And see, to similar effect, the remarks of Representative Lacey (40 Cong. Rec. 7786, June 2, 1906).

The measure presented in 1870 by the Senate Committee on the Judiciary not only made it the "duty" of the United States attorney to institute proceedings, clearly on outside mandate, but also made it the "duty" of the judge to enter a show-cause order. What is of particular interest is that in the first part of the provision—the part adopted in the 1906 legislation—the duty of the attorney to act arose only when he was presented with an affidavit, whereas it was only in the part of the bill that was *not* carried over into the 1906 legislation, *i. e.*, the part seeking to compel *the judge* to act, that there appeared a requirement for "filing" of the affidavit. The proposed section provided (93 Cong. Globe 4835):

> That whenever the district attorney in any district shall be *informed* in and by the affidavit of a credible person setting forth the grounds of the belief of the affiant, that some person therein named has * * * a certificate of naturalization * * * and that he verily believes that such certificate was knowingly procured [unlawfully or is counterfeit] *it shall be his duty* to apply to one of the courts of the United States for such district for an order on the party holding such certificate * * * to show cause why such certificate * * * should not [be held invalid and the citizenship set aside] and thereupon *it shall be the duty of the judge* holding such court, *on filing the affidavit* aforesaid, to grant such order,

> and to give directions for the service thereof on the party, wherever he or she may be, as such judge may deem suitable and proper * * *. [Emphasis added.]

This legislation "died an entirely unrecorded death" in the argument that ensued when Senator Sumner introduced an amendment to naturalize Negroes and orientals. Roche, *Pre-statutory Denaturalization*, 35 Cornell L. Q. 120, 129 (1949). For a period of time congressional interest in specific provisions for denaturalization abated (Roche, *Op. Cit.* 129-137). However, more immediately prior to the instant 1906 enactment, interest in the problem revived and a marked demand developed for a means of assuring denaturalization proceedings when the United States attorney might be indifferent. Such a demand could not be met by a suggestion to citizens to institute the proceedings themselves, for that alternative was not available under the existing authorities, which held that citizens were not proper instigating parties. 3 Moore, *Digest of International Law* (1906), 500; *Pintsch Compressing Co.* v. *Verdin*, 84 Fed. 140, 142 (C. C. D. Mass. 1897); *Commonwealth* v. *Paper*, 1 Brewster 263 (Pa. 1868); *In re Shaw*, 2 Pa. Dist. 250, 252 (1893); *Matter of McCarran*, 8 Misc. (N. Y.) 482; *McCarran* v. *Cooper*, 16 App. Div. 311, 312, affirmed, 162 N. Y. 654 (1900); *Peterson* v. *Texas*, 40 Tex. Civ. App. 175, 177 (1905).

The Commission on Naturalization did not participate in the demand for a means of forcing denaturalization actions; it recommended legislation merely providing, probably unnecessarily, that the United States should have the "power" or the "right" to institute proceedings (H. Doc. No. 46, 59th Cong., 1st Sess., 106, 111).[9] However, the House Committee on Immigration and Naturalization was at the same time confronted with other proposals for legislation in the form of at least three separate bills under which "any citizen" was empowered to institute proceedings.[10] These bills had been introduced in December 1905 and January 1906. Thereafter, in February 1906, Mr. Howells, who had theretofore

[9] That power was considered as already in existence and was being extensively exercised. 40 Cong. Rec. 7871.

[10] H. R. 274, 59th Cong., 1st Sess., introduced by Mr. Jenkins on December 4, 1905, and H. R. 8424, 59th Cong., 1st Sess., introduced by Mr. Hayes on December 15, 1905, provided in their sections 7 and 9, respectively:

"That any court which shall have granted a decree of naturalization may, at any time within five years from the date of such decree, on petition presented by an officer of the United States *or any citizen*, or on belief of error on the part of the court, revise and reexamine the same. For this purpose notice shall be given to all parties concerned, by public advertisement or otherwise, as the court may direct, not less than 3 months previous to an actual judicial inquiry. If upon such examination it shall appear to the court that the decree of naturalization has been surreptitiously obtained, or that any fraud has been perpetrated, or that wilful irregularity, omission or disregard of any of the provisions of the law has taken place, the decree of naturalization shall be rescinded or reversed, and such decree shall be utterly null and void, and any certificate of such naturalization which

introduced bills [11] which were devoid of any indication of any action or affidavit by outsiders, and which substantially followed the recommendations of the Commission, introduced the first draft of H. R. 15442, 59th Cong., 1st Sess. It was in this draft that the language concerning an affidavit first appeared. The language of the earlier Commission drafts speaking in terms of "power" of the United States to institute proceedings was at first retained in H. R. 15442, but disappeared without comment in a revision of June 5, 1906, when the present language appeared, imposing a "duty" to institute the proceedings. 40 Cong. Rec. 7871, 7874.[12]

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may have been granted shall be delivered up and cancelled." (Emphasis added.)

H. R. 10857, 59th Cong., 1st Sess., introduced by Mr. Waldo on January 8, 1906, was of substantially similar text, employing the above phrase "on petition presented by an officer of the United States of America, or by any citizen, or on belief of error on the part of the court."

[11] H. R. 9964 and H. R. 12860, 59th Cong., 1st Sess., introduced, respectively, on December 21, 1905 and January 23, 1906.

[12] The early draft was as follows: "That the United States shall, upon affidavit made by any credible person, have the power to institute proceedings * * *", while the later draft, duly enacted into law, provided: "That it shall be the duty of the United States district attorneys for the respective districts, upon affidavit showing good cause therefor, to institute proceedings * * *."

A change in another portion of the section provided that the proceeding could be brought only in the court of the district in which the defendant resided; theretofore, the district of naturalization had also been available.

Even though there was no specific comment by the legislators on this provision for an affidavit and imposition of a "duty", the purpose seems clear in the changes made by Mr. Howells, the chairman of the House Committee, in substituting the new language for the pallid earlier drafts of the presidential Commission. The imposition of a "duty" to act was no mere restatement of the formerly non-mandatory language. It appears to have been a concession to the multiple and persistent proposals of legislation to compel action upon demand of outside citizens, as evidenced in the three bills introduced by Representatives Jenkins, Hayes, and Waldo (*supra,* pp. 25–26), the substance of which had been incorporated in bills introduced by Representative Jenkins and Senator Platt even in the preceding 58th Congress (3d Sess., H. R. 18594 and S. 7037).

That the demand involved in these bills had its influence is attested in the language of the report that the Committee had had H. R. 274, H. R. 8424, and H. R. 10857, *inter alia,* under consideration; that all the bills had been considered in connection with the drafts proposed by the Commission on Naturalization; and that "the committee has freely drawn from the provisions of all the bills before it in the preparation of the bill herewith submitted" (H. Rep. No. 1789, 59th Cong., 1st Sess., pp. 1, 3).

It is unfortunate that the very brief report of the Committee does not spell out the full history

of the internal discussions. The chronology, however, suggests the following as a reasonable reconstruction of what took place: Mr. Howell's first bills (H. R. 9964 and H. R. 12860) merely placed the proposals of the Commission on Naturalization before the Congress, devoid of any means for compelling any governmental action. Confronted with the repeated demands for granting a right to action by citizens themselves (H. R. 274, H. R. 8424, H. R. 10857, 59th Cong., 1st Sess.; H. R. 18594; S. 7037, 58th Cong., 3d Sess.), Mr. Howells first inserted a provision for an affidavit of "any credible person". This was a first step, albeit a gingerly and reluctant one, toward giving outsiders an opportunity to instigate such an action. It was definitely not incorporated as an additional protective measure for the benefit of the naturalized citizen. Sufficient protection had been deemed afforded the defendant in such action by the ample notice and favorable venue provisions; nothing more had been provided the putative defendant in the whole series of bills from the Commission drafts onward (H. Doc. No. 46, 59th Cong., 1st Sess., 106, 111; H. R. 9964, Sec. 34, and H. R. 12860, Sec. 2, Fifth, 59th Cong., 1st Sess.).

However, if there could be doubt of the purpose, Mr. Howells' second change clarified the matter, possibly on pressure of such as Representatives Jenkins, Hayes, and Waldo. There was no longer

talk of a "power" to act, but the present, forthright language imposing a "duty". It was with a clause thus clarified as imposing a duty that the provision concerning an affidavit was returned to the Congress. It is that "duty" which has remained.

There is reason to believe that when Mr. Howells sought to combine the Commission drafts with some provision for compelled action, he adapted in condensed form the earlier 1870 draft, described *supra*, pp. 23–24, as an available form for compulsory action, despite the long period of time since the birth and demise of that draft. The similarity of the language indicates strongly that Mr. Howells took the first portion of the early draft—the portion requiring the United States attorney to act upon submission of an affidavit to him—and after a first attempt to substitute "power" to act for the word "duty" (in an apparent bow to the Commission's language), went all the way at last with a "duty" to act upon an affidavit of good cause.[13] In this connection it is important to note, as observed above, that a provision for *court filing* of the affidavit—so conspicuous

[13] The change from an affidavit of a "credible person" to an affidavit "showing good cause" was patently in correction of too slavish and incomplete an adaptation of the early language. The early language had used the phrase "affidavit of a credible person" but had spelled out in detail how the affidavit would show cause (see *supra*, p. 23). Merely taking over the phrase "affidavit of a credible person" was insufficient or at least left a dangerous area for implication.

in the early draft—was regarded as applicable only to the discarded second portion of the early draft (the portion seeking to impose a duty upon a judge) and was omitted from the present legislation.

The force of this legislative history is not impaired by the letter, relied upon by respondent and the district judge below, dated March 26, 1907, from Attorney General Bonaparte (*infra*, pp. 30–31). The letter is sought to be adduced as an authoritative administrative interpretation (Br. in Opp. 3; R. 17–18), but it appears, instead, in the full context of the correspondence, appended *infra* (Appendix, pp. 43–59) as a somewhat hasty reply to a departmental inquiry of the Department of Commerce and Labor in the single case of a specific improperly naturalized person. Moreover, the letter itself is at best of questionable clarity, makes no reference whatsoever to the legislative history, and does not indicate whether the affidavit is to be filed in court. Its full text stated:

> The Department has the honor to acknowledge receipt of your letter of March 18th in which you ask whether the filing of an affidavit is necessary to give a United States attorney authority to institute proceedings in any court for the cancellation of a naturalization certificate. It appears to the Department that this is the case. The object of the provision undoubtedly is to protect holders of certificates from annoyance and attorneys from unnecessary

> labor as the result of mere complaints by individuals unable to produce evidence and unwilling to assume the responsibility therefor, as suggested in your letter; but it also seems clear to me that Congress has seen fit to prescribe the method by which this protection to those holding naturalization certificates is to be enforced.
>
> I am, therefore, of opinion that before any United States attorney is authorized to institute proceedings for the cancellation of a naturalization certificate he should be furnished with a proper affidavit on which the proceedings may be based.

In the context of the specific problem—the failure of the Department of Commerce and Labor to furnish any affidavit—it may well be that the Attorney General was saying no more than that the United States attorney should not proceed in the absence of an affidavit from that Department; no reference was made to a filing of the affidavit in court along with the complaint or at any other stage in the judicial proceeding. Cf. *Sullivan* v. *United States*, 348 U. S. 170, 171–174.

This letter was written with only the time for analysis available within the seven days between the inquiry and the reply and without any apparent awareness of the significant legislative history of the enactment. It was paraphrased in the second authority relied upon by respondent and the District Court (Br. in Opp. 4; R. 18), *i. e.*, the Van Dyne text, *op. cit.* p. 138, in which the writer, without explanation, changed the Attorney Gen-

eral's language that an affidavit "should be" furnished, to "must be". Again, no analysis of the legislative history appeared. The same is true of the three decisions constituting the remaining authorities cited by respondent and the District Court, the last of which appeared in 1927 (see, *supra*, p. 18, fn. 6).

This limited and stray thread of authority accumulated no support, as evidenced *supra*, pp. 17–18, fn. 5, in the contrary citations already beginning in 1915 and seemingly unbroken and unquestioned after 1927. While, as also observed *supra*, p. 17, this later and preponderant body of opinion likewise voiced no analysis of the legislative history but seemed content to rest, instead, upon the plain and apparently inescapable effect of the statutory language itself, it does disclose a clear history of administrative practice which assumed that the affidavit was not a jurisdictional or procedural requisite. There could be occasions when the affidavit would be filed in court, if for no other reason than the purpose of anticipating and satisfying more extensive discovery proceedings available to the defense. However, to the extent that Attorney General Bonaparte's remarks are viewed as *requiring* the furnishing of an affidavit—and also to the extent that they are viewed as requiring the filing of the affidavit *in court*—they were widely ignored or rejected, both in the courts and in the executive branch of the government. To borrow the late Mr. Justice

Jackson's expression, there was a clear "surrendering [of] former views to a better considered position" (*McGrath* v. *Kristensen*, 340 U. S. 162, 178). That better considered position is that Congress provided the affidavit as a part only of the provision requiring the United States attorney to act when he would not do so at his own instance. As discussed below, such was the history and effect of the denaturalization statute, as it would have appeared to the legislators who reenacted it in 1940 and in 1952, had they undertaken to examine recent decisions or current practices.

2. *At the time of the 1940 and 1952 reenactments, the weight of authority recognized that the affidavit was not a prerequisite*

Although no enlightening statements of the legislators appear with respect to the reenactments of the instant language in 1940 and 1952, it is of the greatest significance that when the Congress acted with respect to the 1940 and 1952 legislation the decisions and practice were preponderantly to the effect that the statutory language did not require filing of the affidavit in court. See *supra*, pp. 17–18; *Schwinn* v. *United States*, 112 F. 2d 74 (C. A. 9, 1940), affirmed, 311 U. S. 616; *United States* v. *Leles*, 227 Fed. 189 (N. D. Cal., 1915); *United States* v. *Knight*, 291 Fed. 129 (D. Mont., 1923), affirmed, 299 Fed. 571 (C. A. 9); *United States* v. *Schuchhardt*, 48 F. Supp. 876 (N. D. Ind., 1943); *United States* v. *Favorito*, 7

F. R. D. 152 (N. D. Ohio, 1945). The few expressions to the contrary were a quarter of a century and more in the past, by the time of the 1952 enactment, *i. e.*, *Cohen* v. *United States*, 38 App. D. C. 123 (C. A. D. C., 1912); *United States* v. *Salomon*, 231 Fed. 928 (C. A. 5, 1916); *United States* v. *Richmond*, 17 F. 2d 28 (C. A. 3, 1927); letter of Attorney General Bonaparte, March 26, 1907 (unpublished, National Archives), (*supra*, pp. 30–31) (*semble*); Van Dyne, *A Treatise on the Law of Naturalization* (1907) 138.[14]

With this posture of the authorities in 1952, and with the few and doubtful voices that had once treated the affidavit as a jurisdictional or

[14] It may be observed of this latter group of cited views that, as observed *supra*, pp. 17–18, no historical basis was adduced in support of the view that the affidavit was to be a necessary part of the proceedings. The letter of the Attorney General (discussed *supra*, pp. 30–33) was merely a brief answer to an inquiry in a particular case, stating that the United States attorney should be furnished with an affidavit. The Van Dyne text (also discussed *supra*, pp. 31–32) merely paraphrased the language of the Attorney General and adduced, in addition, a State Department practice of questionable significance. The court in *Cohen* v. *United States*, *supra*, in turn, cited the above letter of the Attorney General in deciding that the affidavit was a "condition precedent". In both the *Salomon* and *Richmond* cases, *supra*, the whole thrust of the decisions was that illegal procurement had not been made out, there being no affirmative misconduct and the whole basis of the proceedings having been a mere error of law in the original naturalization proceedings. The affidavit aspect was only seized upon, with little analysis, for an additional make-weight that there was no good cause for the proceedings.

procedural requisite so far removed into the past, it is not unreasonable to assume that the legislators viewed the affidavit as it had been viewed in *Schwinn* v. *United States*, 112 F. 2d 74–75 (C. A. 9):

> This affidavit is not jurisdictional, but merely makes it the duty of the district attorney to proceed.

It is true that when the decision in *Schwinn* v. *United States* came before this Court and was affirmed, 311 U. S. 616, the defendant had abandoned his earlier contention that the affidavit was a jurisdictional requisite. However, there is no reason to believe that this Court ignored the above significant and important statement of the Court of Appeals before it, since the affirmance of the revocation of citizenship would have been extremely unlikely if the strong language of the Court of Appeals with respect to a possibly jurisdictional requirement had been improper. It is to be observed, moreover, that this Court's affirmance on the "sole ground" of illegal procurement did not exclude affirmance of the Court of Appeals' holding as to the affidavit but rather excluded an entirely different point, *i. e.*, the additional ground of fraud charged as a basis for the revocation (O. T. 1940, No. 337, R. 6, 14–16, 74–76).

The state of the law at the time of the 1952 enactment, and the corresponding probable purpose of that legislation, was assuredly not changed

with respect to the affidavit by anything, either specific or implicit, in *Bindczyck v. Finucane*, 342 U. S. 76, decided in November, 1951. That holding, as pointed out *supra*, p. 14, related only to the question whether the proceeding under the instant enactment was intended to be exclusive of other means of revoking citizenship—specifically, exclusive of a naturalizing court's revocation of its own order of naturalization during term time. There was clear non-compliance with conceded requirements of the proceeding under the instant enactment, notably, lack of sixty days' notice. This Court held that the enactment provided the sole and exclusive procedure for revocation of naturalization, but in no respect considered the question of whether an affidavit is a jurisdictional requisite of that proceeding as distinguished from a mere means of requiring action when the United States attorney fails to proceed at his own instance. Absent any reference to or involvement of this point in the decision, it is particularly important to note the warning in the vigorous dissent in *Bindczyck* (342 U. S. at 93) against departures from "normal statutory interpretation"—a caution pertinent here owing to the undue assumptions, based on the *Bindczyck* decision, indulged in by the respondent (Br. in Opp. 5–6) and by the district judge below (R. 15–16).[15]

[15] Even if it were to be assumed that the *Bindczyck* holding somehow warned the legislators of a possible indirect impact

The decisions holding the affidavit not to be a procedural requirement cannot be written off as inconsistent with *Bindczyck* because they sometimes speak of the denaturalization statute as not exclusive of other procedures. What these statements obviously meant, in context, was that the affidavit requirement did not cut down the duty of the United States attorney to act if he himself had good cause. The language of *United States* v. *Knight,* for example, 291 Fed. 129, 130 (D. Mont.), affirmed, 299 Fed. 571 (C. A. 9), which was in turn quoted in *Schwinn* v. *United States,* 112 F. 2d 74, 76 (C. A. 9), did indeed say, "[t]he statute is inclusive, not exclusive", but that phrase was not necessarily overruled in *Bindczyck*, for the phrase related only to the point that the statute "does not preclude public prosecutors from proceeding of their own motion to enforce the laws". The court specifically stated: "It does not appear the suit is upon any [sic] the affidavit of section 15, Act June 29, 1906 (Comp. St. § 4374) but whether the suit could be maintained in absence of statute (*Johannessen* v. *United States,* 225 U. S. 240, 32 Sup. Ct. 613, 56

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of the holding upon the affidavit question, such an effect was terminated by the Congress' prompt abrogation of the effect of the holding itself. While not included in any of the various "omnibus" immigration and naturalization bills introduced in Congress from 1950 to 1952, such a provision was inserted as Section 340 (j) in the statute as finally enacted.

L. Ed. 1066), the affidavit is not jurisdictional". The court in *United States* v. *Leles*, 227 Fed. 189, 190 (N. D. Cal.), relied upon the reasoning heretofore quoted:

> If the disclosures of the affidavit are such as to show "good cause"—that is, facts which, if sustained by proof, would afford ground for revoking the grant of citizenship involved, either for fraud or illegality—it is made his duty to proceed and institute proceedings to have the validity of the grant judicially investigated and determined. When it has accomplished this purpose of putting the wheels of justice in motion, the affidavit would seem to have fulfilled its office, and so far as anything appearing in the act to the contrary, becomes functionless. It is obviously not intended to serve as a pleading, since, in requiring a "suit" to be brought, the statute contemplates the filing of a formal complaint.

In the *Schwinn* case, the Ninth Circuit said, 112 F. 2d at 74–75:

> This affidavit is not jurisdictional, but merely makes it the duty of the district attorney to proceed. The district attorney could institute proceedings of this character sua sponte whenever he had reason to believe that the law had been violated in the respect alleged in the petition.

In short, the major premise of the decisions holding the affidavit non-jurisdictional was that

it was a means of requiring the United States attorney to act at the instance of the outsider, and not a procedural requirement in the action for revocation. This is consistent with the *Bindczyck* decision which holds no more than that, when a United States attorney does act, he must act in conformity with the procedures clearly pertaining to the action itself, as specified in the remaining portions of the statute.

Respondent relies (Br. in Opp. 3) upon a single sentence from *Johannessen* v. *United States,* 225 U. S. 227. Lest it be assumed that the phrase may have induced in the legislators of the 1940 and 1952 reenactments the idea that they were making the affidavit a jurisdictional requisite, we quote the full context in which the proffered phrase appears (225 U. S. at 242–243):

> We do not question that an act of legislation having the effect to deprive a citizen of his right to vote because of something in his past conduct which was not an offense at the time it was committed would be void as an *ex post facto* law. *Cummings* v. *Missouri,* 4 Wall. 277, 321; *Ex parte Garland,* 4 Wall. 333, 378. But the act under consideration inflicts no such punishment, nor any punishment, upon a lawful citizen. *It merely provides that, on good cause shown, the question whether one who claims the privileges of citizenship under the certificate of a court has procured that certificate through fraud or other illegal contrivance,*

> *shall be examined and determined in orderly judicial proceedings.* The act makes nothing fraudulent or unlawful that was honest and lawful when it was done. It imposes no new penalty upon the wrongdoer. But if, after fair hearing, it is judicially determined that by wrongful conduct he has obtained a title to citizenship, the act provides that he shall be deprived of a privilege that was never rightfully his. [Emphasis added.]

Out of this context, respondent extracts the italicized sentence. But this passing remark of the Court is in no sense anything but the most tangential and inconclusive description of the essence or requisites of the denaturalization proceeding, and least of all is it an authority for the requirement of the filing in court of an affidavit in every case, beyond the general requirement, intrinsic in any equitable proceeding, that the proceeding be instituted for good cause. The Court's view of the essence of the proceeding is more properly to be found in another passage of the same decision, in which the approach is less tangential, and in which reference to the affidavit is conspicuous by its absence, notice and venue clearly being considered as the procedural essence (225 U. S. at 239–240):

> Whether the judicial review of a certificate of naturalization should be conducted in one mode or another is a matter plainly resting in legislative discretion. Section 15 of the act of June 29, 1906 (34 Stat.

601), provides for a proceeding in a "court having jurisdiction to naturalize aliens in the judicial district in which the naturalized citizen may reside at the time of bringing the suit," upon fair notice to the party holding the certificate of citizenship that is under attack. No criticism is made of this mode of procedure.

In recapitulation, the legislators of the 1940 and 1952 reenactments, in view of the then current state of the law, were entitled to assume that the language reenacted by them did not make a jurisdictional requirement of the affidavit. The language of the statute, its original purpose, and the existing judicial authority supported the view that the affidavit imposed only a condition requiring a United States attorney to act when he would not do so at his own instance. The affidavit is not, and was never intended to afford, a duplicitous and unnecessary reaffirmation of responsibility and detail reflected by the complaint itself.

CONCLUSION

For these reasons, it is respectfully submitted that the judgment below should be reversed and the case remanded to the District Court.

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